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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application of BellSouth Corp.,
BellSouth Telecommunications, Inc.,
and BellSouth Long Distance, Inc. for
Provision of In-Region, InterLATA
Services in Louisiana

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) CC Docket No. 98-121
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COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES

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AUG - 4 1998

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

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SUMMARY

BellSouth's second application to provide interLATA services in Louisiana can best be described as the "same old same old." While BellSouth appears to have made some progress in implementing the various requirements of section 271 as amplified in various Commission orders implementing that section, it is clear BellSouth cannot show that Track A has been met, and that it continues to fall short in provisioning checklist items adequately to CLECs.

This is the first section 271 application that the Commission has reviewed in six months. It would be a serious blow to competition if the Commission were now to abandon any of the existing pro-competitive precedent created in its previous section 271 proceedings, or to make any major changes to the roadmap articulated in the Michigan Order.¹

First, as ALTS shows below, PCS is not yet, and may never be, "an actual commercial alternative to the BOC." It is still a "complementary" rather than a "competitive" service to local

¹ Application of Ameritech Michigan to Provide InterLATA Services in Michigan, CC Docket 97-137, FCC 97-298 (released August 19, 1997). In addition to the Michigan Order, the Commission has articulated various requirements a Section 271 application must meet in Application of BellSouth Corporation to Provide InterLATA Services in Louisiana, 13 FCC Rcd 62245 (1998) ("Louisiana Order"); Application of BellSouth Corporation to Provide InterLATA Services in South Carolina, 13 FCC Rcd 539 (1997) ("Louisiana Order"); and Application of SBC Communications Inc. to Provide InterLATA Services in Oklahoma, 12 FCC Rcd 8685 (1997) ("Oklahoma Order").

exchange service. Thus, because no other facilities-based competitive local exchange carrier is providing residential service either over its own facilities or "predominantly over its own facilities," BellSouth's application cannot proceed under Track A.

Concerning checklist compliance, BellSouth's application fails for several reasons:

- BellSouth's application fails to provide performance measures disaggregated to an appropriate level and covering a reasonable time period;
- BellSouth's OSS systems do not satisfy section 251's requirement of nondiscriminatory access;
- BellSouth's provisioning of collocation and resale service continues to be untimely;
- BellSouth is illegally refusing to pay CLECs reciprocal compensation for local traffic to Internet Service Providers ("ISPs"); and
- BellSouth's application does not satisfy the public interest.

Given the clear lack of merit to BellSouth's current section 271 application, ALTS' comments focus upon its principal defects.

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AFFIDAVIT OF CHRISTOPHER J. ROZYCKI	

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**COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the Public Notices issued July 9, 1998, and July 23, 1998, (DA 98-1364, and DA 98-1480), the Association for Local Telecommunications Services ("ALTS") hereby files its Comments in the above proceeding.

ARGUMENT

I. BELLSOUTH CANNOT INVOKE TRACK A IN LOUISIANA.

In order for a section 271 applicant to rely upon Track A, it must first establish that there exists: "one or more unaffiliated competing providers of telephone exchange service ... to residential and business subscribers [which offer such service] either exclusively over their own telephone exchange service facilities or predominately over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier." Section 271(c)(1)(A). Because there are no wireline competitive local exchange carriers providing residential services over their own facilities or predominately over their own facilities in

Louisiana, BellSouth cannot qualify under Track A by relying upon competitive wireline facilities.²

Accordingly, BellSouth is left arguing, as it did in its initial Louisiana application that: (1) provisioning of resale service to residential customers satisfies section 271(c) (1) (A) (BellSouth Brief at 7: " ... Track A does not require that both classes of subscribers be served on a facilities basis;" citing to DOJ's Oklahoma evaluation; emphasis in original); (2) wireless PCS providers are competitive telephone exchange services; and, (3) PCS services in Louisiana satisfy the Track A requirement. BellSouth Brief at 9-15. When BellSouth relied on PCS providers in its initial section 271 application in Louisiana, the Commission did not decide there whether for the purposes of section 271 the PCS carriers in Louisiana were competing providers of telephone exchange service, because the Commission found that the application should be rejected for other reasons.³ Louisiana Order at ¶ 72.

² The only carrier that BellSouth alleges provides residential service over its own facilities -- or even "predominantly over its own facilities" -- is KMC Telecom, Inc. The Comments of KMC Telecom being filed in this proceeding show KMC only serves a handful of residential customers, and those few customers are all served via resold lines.

³ The Department of Justice in its Louisiana comments concluded that PCS is not a substitute for wireline service in Louisiana, but declined to reach the legal issue of whether its lack of economic substitutability precluded its legal

(continued...)

**A. BellSouth Cannot Rely Upon Resale to
Residential Customers for Track A Purposes.**

BellSouth's reliance on DOJ's prior comments is unfounded. In an "Addendum" to its Oklahoma evaluation filed May 21st, the Department concluded that: "Section 271(c)(1)(A) does not require that both residential and business customers be served over the facilities-based competitors' own facilities" (Addendum at 2). In support of this view, the Department argued first that the statute need not be read to demand that each class of customers be served by a predominantly facilities-based provider, only that such a provider exist, and that it serve both classes of customers (*id.* at 3). Second, the Department argued as a policy matter that once:

"(1) the facilities-based path is being used wherever requested, (2) and at least one facilities-based competitor is offering service to residential, as well as business, subscribers ... there is no reason to delay BOC entry into interLATA markets simply because competitors that have a demonstrated ability to operate as facilities-based competitors, and that are in fact providing service predominantly over their own facilities, find it most advantageous to serve one class of customers on a resale basis" (*id.* at 4).

With due respect to the Department, it is clear from the statute that Congress has placed residential customers on an equal footing with business customers in Track A, and has made the

³(...continued)
consideration under section 271(a)(2)(A). Evaluation dated December 10, 1997, at 7-9.

determination that RBOC in-region entry should await the RBOCs' compliance with Track A as to both categories of customers.⁴

Beyond the plain statutory error in relegating residential customers to second class status under Track A, the Department was also mistaken in concluding that entry into business markets on a facilities basis somehow demonstrates a new entrant's ability to enter residential markets in the same fashion. Based on this erroneous assumption, the Department concluded that a choice by a facilities-based new entrant to serve residential customers through resale is simply a decision "most advantageous" to themselves, and therefore should not affect Track A approval.

The legislative history of section 271 amply demonstrates the Department's error. The Conference Committee Report expressly refers to cable providers as a paradigm of potential facilities-based competitors (H.R. REP. No. 104-458 at 148). Cable companies serve residential customers, not businesses. The Conference Committee's reliance on the fact that "95 percent of United State homes" have cable available to them would have been pointless if the Committee were actually content to have the

⁴ See also Chairman Bliley's letter to the Commission correcting DOJ dated June 20, 1997: "As the primary author of this provision, I feel compelled to inform you that the Department misread the statute's plain language the Department wrongly takes the view that section 271(c)(1)(A) is satisfied if a competitor is serving either residential or business customers over its own facilities" (emphasis in the original).

"facilities-based" requirement discharged through only resale (*id.*).

Furthermore, the Department's silent assumption that the provision of facilities-based competitive service to business markets adequately demonstrates an ability to serve residential markets the same way -- thus suggesting that a decision to employ resale in residential markets is simply a "most advantageous" choice by the competitor -- was completely unsupported by the record, and was inconsistent with other statements by the Department.

Elsewhere the Department has estimated that residential customers "would derive substantial benefits -- possibly more than \$12 billion annually -- from the development of competitive markets in which prices reflect economic costs" (DOJ Reply Comments in CC Docket No. 96-98, filed May 30, 1996, at 31). The Department's reliance on a potential benefit of more than \$12B annually to residential customers as a result of economically-based local residential service would be seriously undercut, or at least seriously delayed, if RBOC in-region entry could be predicated on the provisioning of only resold competitive services to residential customers.

Accordingly, BellSouth cannot rely upon resold service to residential customers to meet the requirements of Track A.

**B. BellSouth Cannot Rely Upon
PCS to Qualify Under Track A.**

In its first Louisiana Order, the Commission reiterated its position articulated in previous section 271 Orders that the use of the term "competing provider" suggests that there must be an "actual commercial alternative to the BOC,"⁵ and noted that PCS providers "appear to be positioning their service offerings to become competitive with wireline service, but they are still in the process of making the transition from a complementary telecommunications service to a competitive equivalent to wireline services." Louisiana Order at ¶ 73 (emphasis added).

BellSouth attempts to show in its application that in the six months since the Commission rejected the initial Louisiana application PCS has become a "competitive equivalent" to telephone exchange service. BellSouth relies upon a study prepared by M/A/R/C Research that found a few people in Louisiana had either dropped their wireline service when signing up for PCS, or decided to order PCS in lieu of wireline service. BellSouth Brief at 12-15.

Review of the M/A/R/C study does not support the reliance BellSouth seeks to place upon it. First, the study at most shows a very slight increase for the 1998 study (when compared to a

⁵ Oklahoma Order at ¶ 14; Michigan Order at ¶ 75.

1997 study) in the percentage of persons who claim to have "substituted" PCS for wireline service.⁶ Therefore, it is impossible to conclude that there has been any real change in the perception of consumers as to the competitive equivalency between the two services.

Second, even viewing the M/A/R/C study in the most favorable light, it is difficult to see how BellSouth can conclude that a "significant number of the PCS users subscribed to their wireless service as a direct substitute for BellSouth's wireline service." The M/A/R/C study consisted of interviews of only 202 PCS customers. When compared to the hundreds of thousands of BellSouth customers in Louisiana, this thin margin of wireless users cannot reasonably support BellSouth's use of the word "significant." There were no interviews of persons who had either not thought about PCS service, or had considered it and decided not to subscribe to it.⁷ Even though the study found

⁶ While it is difficult to compare the results of the 1997 and the 1998 study because the 1998 study gives 1997 results only in percentage form, it is clear the differences amount to just a few people. Although the 1998 study indicates that it is based upon 202 interviews, it is unclear how many interviews were conducted in 1997. On a percentage basis, a slightly larger percentage of respondents to the 1998 study stated that they had either eliminated wireline service and replaced it with PCS or had ordered PCS, instead of adding a second wireline. However, in 1998 a smaller percentage of respondents stated that they had subscribed to PCS for initial service instead of wireline.

⁷ There are approximately 35,000 PCS customers in
(continued...)

that about 5% of the PCS subscribers interviewed (ten persons) subscribed to PCS instead of adding a second wireline, this does not show that even those persons view PCS as a "direct substitute" for wireline service. The most that can be said about these consumers is that they may view PCS as a "direct substitute" for a second line while they continue to use a wireline phone for their first phone.

Only a subscriber who completely gave up wireline service, or who never ordered wireline service in the first place and uses PCS service instead, might be considered to be a consumer who views PCS as "directly competitive" with wireline service. The M/A/R/C study found only about a dozen persons who had actually given up their wireline phone for a PCS phone. Further, it is clear from review of some of the interviews there were many reasons that people choose PCS service that, in fact, support a conclusion that wireline and PCS are not "substitutes" in their view. Indeed, many persons who chose PCS service over wireline service chose it because, for their purposes, PCS had significant advantages over wireline service.⁸

⁷(...continued)

Louisiana. BellSouth has approximately 2.2 million lines in Louisiana.

⁸ There were a number of people whose lifestyle was particularly mobile, and for them PCS offered advantages over wireline service. It should be noted, however, that one

(continued...)

To take an obvious example, an affluent single-adult household with light calling patterns might well choose to substitute PCS for wireline service. But that choice in no way demonstrates that PCS is a substitute for landline service in many other households with lower incomes, higher calling patterns, or with latchkey children at home.

In assessing whether PCS actually serves as a substitute for wireline service, it is important to recognize the important distinction that exists between determining whether a PCS service is a substitute for wireline service, and the very different question of whether a sufficient competitive facilities-based market share exists to trigger Track A. While section 271 does not specify any particular market share that an incumbent must lose in order to qualify under Track A (though ALTS contends such an amount must be more than de minimis for a number of reasons), an economic determination of product substitutability inherently requires consideration of the overall services being examined.

To illustrate this difference, assume that niche portions of the PCS market may have substituted PCS for wireline service in raw numbers sufficient to trigger Track A had they constituted

⁸(...continued)

disadvantage of PCS over wireline is the inability of PCS to be used for data services except under extremely slow and cumbersome circumstances.

competitive wireline subscribers (keeping in mind that ALTS does not concede this is actually the case in Louisiana). The fact that the raw numbers of PCS subscribers without wireline service might be adequate to trigger Track A had they constituted competitive wireline subscribers is legally irrelevant unless and until PCS as a whole is judged to be an economic and legal substitute for wireline service. Because the M/A/R/C study fails to show PCS to be an overall viable competitive alternative to wireline local exchange service, BellSouth cannot invoke Track A by relying upon certain niche PCS customers that may have made a complete substitution of PCS for wireline.⁹

Thus, because there are no competing providers of local exchange service to residential and business customers that provide service either exclusively or predominantly over their own facilities, and because BellSouth has entered into one or more binding agreements with competitive carriers who seek to provide such services, the BellSouth application is premature.

⁹ BellSouth argues that PCS can be competitive with wireline local exchange service "on price alone." BellSouth Brief at 13. Even if this were correct, it is only competitive on "price alone" for those persons who use the phone infrequently. Because PCS service is generally priced on a minutes of use basis, a consumer would find PCS price competitive only if he or she used the telephone about 120 minutes a month, or about four minutes a day.

Furthermore, while the portability of a PCS unit might be beneficial to a single adult household, other homes with latchkey children would likely view PCS' portability as a threat, rather than a benefit.

In addition, because a number of competitive carriers have sought interconnection with BellSouth and are making reasonable steps toward providing facilities-based business and residential service in Louisiana, an application under Track B is also foreclosed.¹⁰

II. BELLSOUTH'S APPLICATION FAILS TO CONTAIN PERFORMANCE MEASURES THAT ARE DISAGGREGATED TO AN APPROPRIATE LEVEL.

BellSouth has made progress in adopting performance measures and reporting requirements since its last application. However, the performance measures adopted by the Louisiana PSC are "interim," and there has been no time for either BellSouth or the CLECs to gain experience with these reports, far less be able to ascertain whether BellSouth has met the checklist's legal standards. Indeed, until recently many reports that had been required from BellSouth in interconnection or other agreements were submitted late to the CLECs by BellSouth, if they were

¹⁰ Although there have been generalized accusations in the past year that CLECs are somehow dragging their feet in providing facilities-based residential services for the purpose of keeping RBOCs out of the interLATA market, there is no proof that this has happened. In fact, there are numerous reasons, including the extremely long time it takes to get collocation, under the control of the RBOCs themselves that have slowed the implementation of residential competitive services. Most members of ALTS also do not provision significant amounts of long distance service, and thus have no economic motive to deny RBOC entry into the interLATA market except as a tool to opening the local markets.

submitted at all.¹¹

While the time period for filing comments on section 271 applications is not sufficient to permit ALTS to review all the affidavits and supporting materials supplied by BellSouth relative to its performance measures, it is also clear that the performance measures provided by BellSouth fall short of the information needed to determine whether UNEs and resold services are being provisioned in a reasonable and non-discriminatory manner.

BellSouth proposes that for the provisioning of UNEs and resale services, reports should be compiled only on a state and regional level. But if performance information is not geographically disaggregated, there will be no way for regulators or the CLECs to discern whether there are differences in performance based upon whether BellSouth faces competition in a particular area.¹² Information submitted on a state by state level will lump provisioning in rural areas with provisioning in urban areas where competition is most likely to begin. Because provisioning of service in urban areas will likely be faster than

¹¹ See Comments of Time Warner in this proceeding filed August 4, 1998.

¹² The Commission has required that the RBOC have clear and precise measurements by which CLECs and regulators can confirm nondiscriminatory provisioning of facilities and services. Michigan Order at ¶ 209.

provisioning in rural areas, this aggregation of the data could disguise RBOC discrimination against CLECs in the competitive areas. Disaggregation does not necessarily need to be on an end office by end office basis, but it should be able to detect the market-specific discrimination described above. ALTS suggests that information provided on an MSA by MSA basis would be sufficient.¹³

In addition, there are insufficient enforcement mechanisms in place in the event that BellSouth fails to meet its proposed performance measures. Without effective enforcement provisions in the negotiated interconnection agreements, BellSouth will have no incentive to continue to comply with nondiscrimination provisions, and its agreed-upon performance measures, after a 271 application is granted.

**III. BELLSOUTH'S APPLICATION FAILS TO
COMPLY WITH THE COMPETITIVE CHECKLIST.**

**A. CLEC Experience with BellSouth's OSS Demonstrates
Those Systems Do Not Satisfy the Section 251
Requirement of Nondiscriminatory Access.**

The Commission has long recognized the importance of nondiscriminatory access to ILEC operations support systems for

¹³ For example, SBC has proposed providing performance data below the state level (see SBC's comments filed June 1, 1998 in the OSS NPRM at 3: "For those processes that are managed at a smaller geographic level [than statewide] -- such as, provisioning -- the results should be produced at lower geographic levels"). See also Michigan Order at ¶ 128.

competitive carriers.¹⁴ Although consumers plainly are interested in any price differentials between CLECs and ILECs, it is also clear that customer service, including speed of delivery, accurate billing, and rapid response to problems, is important to consumers. That is why in reviewing the first four section 271 applications submitted to it, the Commission thoroughly examined the applicant's operation support systems to determine whether they enable CLECs to review customer records, order services or UNEs, provision, repair and bill services in a timely, efficient and accurate manner.

In its initial Louisiana order, the Commission agreed with a number of commenters that orders submitted via the electronic data interface ("EDI") should mechanically flow-through BellSouth's systems (Louisiana Order at ¶¶ 24-25). In the current application, BellSouth claims that fully mechanized order generation is currently available for most of its resale services and four unbundled network elements. Stacy OSS Affidavit at 64. In addition, BellSouth claims it has implemented a new capability that allows the use of a single change order for resold services,

¹⁴ As the Commission noted in the Local Competition Order: "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair and billing for network elements and resale services in substantially the same time and manner than an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing." Local Competition Order at ¶ 518.

rather than the separate "new" order and "disconnect" orders that previously had been required.

BellSouth contends the new processes have eliminated any concerns the Commission may have held concerning its ordering processes. In support of this position, BellSouth claims that: "In May 1998, approximately 72% of CLEC orders for these services and selected UNEs flowed-through EDI and LENS without human intervention. After removing the CLEC-caused errors from the base of valid orders, approximately 82% of CLEC orders flowed through." *Id.* at ¶ 121. BellSouth also claims that its combined retail flow-through during this period was approximately 89%. BellSouth Application, Exhibit 1 to the Brief ("BellSouth's Resolution of FCC Concerns") at 2.

However, the attached affidavit of Mr. Christopher J. Rozycki, Director-Regulatory Affairs for ITC DeltaCom Communications, Inc., explains that ITC DeltaCom "received error rejection notices from BellSouth in 16% of the orders submitted during the time frame of March to May 1998. A majority of these errors appear to be generated by problems in the current BellSouth ordering system." Rozycki Aff. At ¶ 9. Furthermore, Mr. Rozycki points out that BellSouth's EDI "flow-through" has resulted in longer intervals than experienced for faxed orders (*id.* at ¶ 8), strongly suggesting that the "flow-through" contains at least some manual intervention.

Even if these numbers should be taken at face value (and ALTS believes they should not), they plainly demonstrate that BellSouth has failed the checklist requirement established in the Michigan Order. The 89% flow-through for BellSouth's own retail orders plainly exceeds either the 82% or 72% numbers achieved for CLECs. This disparity clearly violates the Michigan Order standard (as also evidenced by BellSouth's pending petition for reconsideration in that proceeding requesting that the Commission employ a more lenient standard for OSS compliance).¹⁵ For the purposes of the present proceeding, BellSouth has chosen to pretend that its petition has been granted.

As for the consequences of BellSouth's numbers, a 7% difference in flow through between the incumbent and CLECs is hardly insignificant. While ALTS recognizes that in any month results for RBOCs and CLECs may be slightly different, BellSouth should be required to explain why the difference was as great as it was. In addition, one would expect that the flow-through for CLECs after removing CLEC-caused errors should show better results for CLECs than for the RBOC, since presumably there are also input errors on the side of the RBOC.

¹⁵ BellSouth Petition for Reconsideration of the Michigan Order at 4.

B. BellSouth's Provisioning of UNEs, Collocation and Resale Service Has Not Been Timely, and Thus Does Not Satisfy the Requirements of the Competitive Checklist.

In ruling on BellSouth's South Carolina section 271 application, which had been filed a few weeks prior to the initial Louisiana application, the Commission found that BellSouth had failed to demonstrate that it was in fact offering collocation in a timely manner.¹⁶ In the instant application BellSouth states that it has taken care of the Commission's concerns because in Louisiana the average collocation installation interval has been 117 days.¹⁷ However, there are currently only two physical collocations in Louisiana today.¹⁸ It is therefore impossible to discern whether in fact collocation is being offered in a timely manner.

The members of ALTS are extremely encouraged that BellSouth has now, finally, agreed to cageless collocation. This should decrease the time for collocation arrangements significantly. However, BellSouth's current offer, however well-intentioned, suffers from the same uncertainty and vagueness that infected its prior collocation proposals. Because it remains uncertain and untested at this time, it cannot be used to support the present

¹⁶ South Carolina Order at ¶ 203.

¹⁷ In the e.spire comments filed August 4, 1998, in this docket, e.spire indicates it has, on at least one occasion, waited about 9-10 months for collocation in BellSouth territory.

¹⁸ See Wright Affidavit at ¶ 38

application. Indeed, to the extent that BellSouth has recognized that cageless collocation must be provided to comply with section 271, the absence of a proven cageless collocation offering is yet another fatal defect in the application.

Concerning resale, DeltaCom's affidavit shows that "CLEC resale orders are not being processed by BellSouth at parity with those orders processed for its retail end users." Rozycki Aff. at ¶ 17.

**IV. BELLSOUTH IS ILLEGALLY REFUSING TO PAY CLECS
RECIPROCAL COMPENSATION FOR LOCAL TRAFFIC TO ISPS.**

Checklist compliance under section 271(c)(2)(B)(xiii) requires RBOCs to enter into and comply with "reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." As the Commission is well aware, a number of the RBOCs have been refusing to pay reciprocal compensation to CLECs for termination of calls to Internet Service Providers ("ISPs"), claiming that such calls are interstate in nature.¹⁹ Twenty states have now ruled that calls to ISPs are covered by reciprocal compensation agreements. Although Louisiana has not been presented with the issue of whether calls to ISPs are covered in reciprocal compensation agreements, North Carolina and

¹⁹ In the instant application BellSouth simply states that BellSouth does not pay local interconnection charges for traffic termination to enhanced service providers because this traffic is jurisdictionally interstate. Brief at 59-60.

Florida,²⁰ where BellSouth also operates, have ruled that such agreements cover calls to ISPs.²¹ Yet BellSouth recently announced that it has paid no reciprocal compensation for any calls that it has determined are terminated at an ISP.²² Thus, BellSouth is clearly disregarding and refusing to comply with state orders relating to its reciprocal compensation agreements.

Regardless of how the Commission views this issue and regardless of whether the incumbents decide to negotiate different agreements in the future, this Commission should not, either under the competitive checklist nor the public interest test, allow a Bell Operating Company to begin providing in-region interLATA service while the BOC is disregarding a valid state order relating to reciprocal compensation.

**V. BELL SOUTH'S APPLICATION FAILS TO
SATISFY THE PUBLIC INTEREST TEST.**

BellSouth generally argues that an analysis of the state of local competition may not be made under the public interest test and that the Commission is limited to considering the effects of

²⁰ On August 4, 1998, Florida became the twentieth state (and the second in BellSouth's region) to require the payment of reciprocal compensation for local calls to ISPs.

²¹ North Carolina Utilities Commission, Interconnection Agreement between BellSouth Telecommunications, Inc. and US LEC of North Carolina, Inc., Order Concerning Reciprocal Compensation for ISP Traffic, NCUC Docket No. P-55, SUB 1027 (Feb. 26, 1998).

²² See Communications Daily at 3 (July 20, 1998).

Bell entry on the long distance market. BellSouth Brief at 73-76. The Commission has rightly established, however, that under the public interest test it may look at the effect of Bell entry into long distance on all markets, and may also consider the state of local competition in making this analysis.²³

This second application of BellSouth expends many pages and includes numerous graphs to show that the market in Louisiana is open. It is not. As indicated in the Affidavit of Mr. Wright, the number of lines served by facilities-based competitive carriers has only risen to approximately 4300 lines in the 30 months since the passage of the Telecom-Communications Act of 1996. Wright Aff. at ¶ 33. This is only 0.2% of the total lines in Louisiana, and the increase in competitive lines during the past year is only about 5% of the increase in lines for BellSouth in Louisiana during the same period. Mr. Wright also touts the 100 unbundled network loops in service in Louisiana,

²³ In the Michigan Order the Commission encouraged states to submit information on the state of local competition and noted that, while not germane to the competitive checklist, information on the state of local competition is "valuable" to the Commission's public interest determination. Application of Ameritech Michigan Pursuant to Section 271, CC Docket No. 97-137, FCC 97-298 at ¶ 34 (released August 19, 1997).

²⁴ and the two existing collocation arrangements. Obviously, none of these is any indication of a market that is open, or that facilities-based competition is anywhere near "irreversible."

Given BellSouth's plain non-compliance with section 271's competitive checklist, and the unquestionable absence of sustainable facilities-based competition in Louisiana, BellSouth's application fails the public interest requirement on its face.

²⁴ On page 17 of his affidavit, Mr. Wright states that "as of June 1, 1998, two wireline facilities-based CLECs had requested and placed into service approximately 100 unbundled network loops in Louisiana. BellSouth's brief (at page 43) states that as of June 1, 1998, "approximately 107 loops had been promised in Louisiana." Regardless of whether these loops have only been promised or are in service, one hundred loops is a minuscule number, representing less than 1/10 of 1% of the lines in Louisiana.